

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOHN J. SELLARS,

Plaintiff,

v.

**JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY,**

Defendant.

CASE NO. C2-06-930

JUDGE EDMUND A. SARGUS, JR.

MAGISTRATE JUDGE NORAH MCCANN KING

OPINION AND ORDER

On February 4, 2008, Magistrate Judge Norah McCann King issued a Report and Recommendation concluding that the decision of the Administrative Law Judge should be reversed and remanded for additional consideration of the treating physician's analysis and opinion. Thereafter, both the Plaintiff and Defendant filed objections to the Report. Under Federal Civil Rule 72(a), this Court has considered the objections and finds that they are without merit in that the Magistrate Judge's conclusions were neither clearly erroneous or contrary to law. For the reasons that follow, the Court overrules the objections and adopts the Report and Recommendation issued by the Magistrate Judge.

I.

In her decision of February 4, 2008, the Magistrate Judge determined that the Administrative Law Judge erred in her evaluation of the testimony of Dr. P. Thomas Forrestal, the Plaintiff's primary care physician. Dr. Forrestal opined that the Plaintiff would deteriorate if placed under the stress of a job. Dr. Forrestal also performed a mental residual functional

capacity assessment and determined that the Plaintiff's mental impairments resulted in marked impairment in most areas of functioning.

Further, the conclusions reached by Dr. Forrestal were confirmed, in part, by the opinion issued by Lee E. Roach, Ph.D., who evaluated the Plaintiff at the request of the State Agency. Dr. Roach found that the Plaintiff suffered from a recurrent and severe major depressive disorder, together with a dependent personality disorder and borderline intellectual functioning. He further noted that it was questionable whether Plaintiff could return to work. He found that the Plaintiff was impaired with regard to his ability to pay attention, concentrate or persist in simple repetitive tasks.

In addition, Dr. Darrell Smith, the Plaintiff's former treating psychiatrist through 2004, also completed a mental residual functional capacity assessment. His assessment results and opinion corroborate the findings and conclusion reached by Dr. Forrestal.

Dr. David W. DeMuth, a non-treating and non-examining physician, reviewed medical records regarding the Plaintiff. While agreeing that the evidence documented a major depressive disorder, borderline intellectual functioning and dependent personality disorder, Dr. DeMuth opined that the conditions presented only a mild restriction of activity. He also noted that the Plaintiff was able to perform a job as recently as August of 2002.

The Magistrate Judge found that the Administrative Law Judge had erred in her review of the opinion rendered by Dr. Forrestal, the Plaintiff's treating physician. The Administrative Law Judge discounted his opinion as not being supported by objective evidence or acceptable diagnostic techniques. Dr. Forrestal's conclusions, however, are further supported by the opinions and findings of Dr. Smith, a former treating physician, and Dr. Roach, an

examining psychologist.

This Court has reviewed the objections lodged by the Defendant. This Court rejects the Defendant's contention that Dr. Forrestal should not be considered the Plaintiff's treating physician. Dr. Forrestal is the Plaintiff's primary care physician. Further, the opinions expressed by Dr. Forrestal are in accord with those made by Dr. Smith, a psychiatrist.


The Plaintiff does not object to a remand, but seeks to limit the scope to the sequential evaluation used to determine eligibility. Because the opinion of the treating physician is not reviewed in the absence of other evidence of record, the Court rejects such a narrow remand.

II.

Based upon the foregoing, this Court finds that the Report and Recommendation of the Magistrate Judge is **AFFIRMED** in all respects.

IT IS SO ORDERED.

3-24-2008
DATE



EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE